A

LEE HUI JIAN

v.

PUBLIC BANK BHD

B

HIGH COURT SABAH & SARAWAK, SIBU
LINTON ALBERT J
[CIVIL APPEAL NO: 12-7-2006]
15 FEBRUARY 2007

C ***CIVIL PROCEDURE:*** *Jurisdiction - High Court of Malaya distinct from High Court of Sabah and Sarawak - Vesting order obtained in High Court of Malaya - Whether bank with vesting order could pursue claim on hire purchase agreement transacted in Sarawak - Whether vesting order effective only if obtained in the High Court of Sabah and*
D *Sarawak - Courts of Judicature Act 1964, ss. 3, 23*

CIVIL PROCEDURE: *Locus standi - Bank with vesting order - Claim on hire purchase agreement - Hire purchase agreement transacted in Sarawak - Vesting order obtained in High Court of Malaya -*
E *Whether vesting order ineffective in Sarawak - Whether vesting order effective only if obtained in the High Court of Sabah and Sarawak - Whether bank lacked locus standi to pursue claim - Courts of Judicature Act 1964, ss. 3, 23*

The respondent bank was the successor to a finance company and
F obtained a vesting order in the High Court of Malaya in Kuala Lumpur vesting whatever agreements or related business of the said finance company in the respondent. The appellant was the administratrix of the hirer (deceased) and guarantor under a hire purchase agreement with the said finance company. The hire
G purchase agreement was transacted in Sibu, Sarawak. The respondent pursued its claim on the hire purchase agreement against the appellant in the sessions court and obtained a summary judgment. Hence the appellant's appeal.

H The issue was whether the respondent had the *locus standi* to pursue its claim on the hire purchase agreement since the agreement was transacted in Sarawak.

Held (allowing the appeal):

I **(1)** The relevant provisions of the Courts of Judicature Act 1964 made it abundantly clear that the vesting order was of no consequence beyond the territorial jurisdiction of the High

Court in Malaya (ss. 3, 23). Therefore, the vesting order was ineffectual in transferring the said finance company's business assets and liabilities in Sibu, Sarawak to the respondent. The vesting order was only effectual if it was obtained in the High Court of Sabah and Sarawak. It followed that the respondent lacked the *locus standi* to pursue the claim on the hire purchase agreement and the guarantee made under it. (paras 4 & 5)

Case(s) referred to:
Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 FC ***(refd)***
Standard Chartered Bank Malaysia Bhd v. Eden Enterprise (M) Sdn Bhd [2003] 2 CLJ 671 HC ***(refd)***

Legislation referred to:
Banking and Financial Institutions Act 1989, s. 50(3), (8)
Bankruptcy Rules 1969, rr. 101(1), (2)
Courts of Judicature Act 1964, ss. 3, 23

For the appellant - William Kong; M/s William Kong & Co
For the respondent - Lee Bee Teck; M/s Tang & Tang, Wahap & Ngumbang

Reported by Usha Thiagarajah

JUDGMENT

Linton Albert J:

[1] This was an appeal by the defendant against the decision of the Sessions Court, Sibu, allowing the plaintiff's application for summary judgment. It arose from a hire purchase agreement dated 12 April 2002 between Public Finance Berhad (the finance company) and one Loi Hu Kiek (deceased) the hirer under the hire purchase agreement. The plaintiff claimed to be the successor of the finance company by an order dated 20 August 2004 given by the High Court of Malaya in Kuala Lumpur vesting whatever agreements or related business of the finance company in the plaintiff. The defendant was the administratrix of the hirer and guarantor under the hire purchase agreement. The appeal was allowed and I now give the grounds therefor.

[2] It was contended for the defendant that the vesting order did not and could not confer on the plaintiff the right to commence the action against the defendant and since the plaintiff was also not a party to the hire purchase agreement, it had no *locus standi*. The response of learned counsel for the plaintiff to the proposition advanced on behalf of the defendant was simple and straightforward. The vesting order was made pursuant to s. 50 of the Banking And Financial Institutions Act 1989 (the Act) and s. 50(3) of the Act stipulated that an order made under s. 50(1) was not challengeable. The plaintiff relied heavily on the case of *Standard Chartered Bank Malaysia Bhd. v. Eden Enterprise (M) Sdn. Bhd.* [2003] 2 CLJ 671 where the defendant unsuccessfully sought to declare the order vesting the assets and liabilities of the plaintiff's predecessor, Standard Chartered Bank (SCB) in the plaintiff on the ground that it was *ultra vires* the Act and therefore not binding on the defendant because of the definition of the word "business" in s. 50(8), whereby the vesting order could only provide for the transfer and vesting of the whole of the business of SCB worldwide upon the plaintiff and could not be confined, as was the case there, to that part of the worldwide business of SCB located in Malaysia alone. Learned counsel emphasized the following passages in the judgment of Selventhiranathan, J at pp. 88-91:

> ... the instant appeal before this court arose out of the O. 14 application taken out by the plaintiff for summary judgment primarily on the ground that the defendant had no defence to this action. In the circumstances it was clearly a fallacy on the part of the defendant to come to court in an application of this nature to attempt to challenge an order of another High Court (ie, the vesting order) which had been made and duly perfected and applied in various proceedings before the superior courts in this country ...
>
> The relevant provisions of the Act in this context are enabling in nature and not prohibitory in that they made possible the transfer of SCB's business in Malaysia as a whole to the Plaintiff through a single application to the High Court, thereby obviating the need for a piecemeal transfer of the assets and liabilities related to the said business. There is nothing in the Act to prohibit such transfer or to specify that such transfer would be null and void unless the whole of SCB's business worldwide is transferred to the plaintiff at the same time as well ...

> ... this court would clearly have no business to look into the validity or otherwise of the vesting order as no step was taken by the defendant to have the order set aside in the proceeding in which it was granted ...

[3] Clearly, in the instant appeal, the challenge mounted by the defendant was not so much on the validity of the vesting order but rather, the extent and applicability of the vesting order beyond the territorial jurisdiction of the High Court in Malaya. Hence, reliance by learned counsel for the plaintiff on that case was misplaced. Simply put, the question to be determined was whether the vesting order given by the High Court in Malaya at Kuala Lumpur was competent to effect the transfer of the finance company's business to and vest it in the plaintiff to clothe it with the requisite *locus standi*, bearing in mind the fact that the hire purchase agreement was entered into in Sibu, Sarawak and so were the subject matter and the parties to the hire purchase agreement. The Federal Court case of *Fung Beng Tiat v. Marid Construction Co.* [1997] 2 CLJ 1, an authority cited by learned counsel for the defendant was illustrative of the argument advanced on behalf of the defendant. In that case the creditor caused to be issued from the registry of the High Court at Kuala Lumpur a bankruptcy notice for a judgment sum to the debtor and subsequently presented a petition against the debtor. The debtor resisted the petition arguing that the creditor ought to have presented his petition in the High Court in Sabah and not in the High court in Malaya pursuant to r. 101(1) and in (2) of the Bankruptcy Rules 1969 because the debtor was, for the one year preceding the presentation of the petition, not resident in Kuala Lumpur or in any other state within Peninsular Malaysia but ordinarily resident in Sandakan, Sabah. The debtor's appeal against the dismissal of his notice of intention to oppose the petition was allowed by the Federal Court.

Gopal Sri Ram, JCA delivering the judgment of the court had this to say:

> First, it is crystal clear from art. 121 of the Federal Constitution that there are two separate High Courts in Malaysia exercising distinct territorial jurisdiction over different geographical areas of the country. There is the High Court in Malaya and there is the High Court in Sabah and Sarawak. Each has jurisdiction over disputes that arise within its territory. As presently advised, there is absent in any Federal legislation that confers power upon the one High Court to transfer proceedings to the other.

[4] Despite the all-encompassing tenor of the Act, it was totally devoid of any specific provision extending the territorial jurisdiction of the High Court in Malaya to the territorial jurisdiction of the High Court at Sabah and Sarawak. Section 50(3) of the Act merely provides this: "... the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings." The relevant provisions of the Courts of Judicature Act 1964 made it abundantly clear that the vesting order in the instant appeal was of no consequence beyond the territorial jurisdiction of the High Court in Malaya.

Section 3:

> "High Court" means the High Court in Malaya and the High Court in Borneo or either of them, as the case may require
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> "local jurisdiction" means:
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> (a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and
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> (b) in the case of the High Court in Borneo, the territory comprised in the Borneo States, namely, Sabah and Sarawak,
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> including, in either case, the territorial waters and the air space above those States and the territorial waters.

Section 23:

> (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:
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> (a) the cause of action arose, or
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> (b) the defendant or one of several defendants resides or has his place of business, or
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> (c) the facts on which the proceedings are based exist or are alleged to have occurred, or
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> (d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

[5] Therefore, it stood to reason that the vesting order given by the High Court in Malaya at Kuala Lumpur must of necessity be ineffectual in transferring to the plaintiff, the finance company's business assets and liabilities in Sibu, Sarawak. The vesting order could only have been effectual if it had been obtained in the High Court of Sabah and Sarawak, otherwise, as in the instant appeal, the plaintiff lacked the *locus standi* to pursue the claim on the hire purchase agreement and the guarantee made under it.

[6] In the circumstances, the appeal was allowed with costs.